

## **REMARKS**

Upon entry of this Amendment, claims 1-36 are pending. Of the pending claims, claims 1-8, 19-21, 24 and 26-34 are withdrawn from further consideration. New claims 35 and 36 are added herein. The new claims find support in the specification and claims as filed. No new matter is added.

In the Office Action, the examiner required election to one of Inventions I – XI. Examiner also required election to one specific polynucleotide sequence or one specific polypeptide sequence.

Applicants herein elect Group VIII, Claims 9-18, 22-23 and 25 for prosecution on the merits, with traverse. Applicants also elect polynucleotide sequence encoding KIF-2 homologue (SEQ ID NO:142), with traverse.

With respect to the requirement for the election of a single polynucleotide sequence of Group VIII for examination, Applicants submit that this is contrary to the guidelines and rules set out in the MPEP section 803.04. The MPEP clearly states that the Commissioner permits the examination of a reasonable number of sequences in biotechnology cases, and that “normally ten sequences constitute a reasonable number for examination purposes”. Moreover, the MPEP states that the number of sequences to be examined will be held to less than ten only in “exceptional cases”. Applicants submit that the Examiner’s deviation from these guidelines by requiring the election of a single sequence places an undue burden on Applicants. That is, based on the description in the MPEP, Applicants filed the instant invention with the expectation that at least ten sequences would be examined. To now apply restriction to the different sequences of the invention runs counter to the MPEP guidelines creates an unreasonable imposition on Applicants to incur the cost and loss of patent term for filing at numerous separate divisional applications to obtain the examination of sequences which the MPEP clearly states should be examined in a single application. Accordingly, Applicants request that the Examiner permit the examination of the additional polynucleotide sequences encompassed by Group VIII, in particular the polynucleotide sequences of Claim 16, especially SEQ ID NOS: 144, 146 and 148 of Example 9, which are all directed to polynucleotide sequences in which mutations result in male sterility.

Applicants understand that this places an additional search burden on the Examiner, but submit that the burden is not undue. As such, Applicants submit that rejoinder of either the polynucleotide sequences of Group VIII and/or the polynucleotide sequences of SEQ ID NOs: 142, 144, 146 and 148 . Reconsideration of the Restriction is respectfully requested.

Respectfully submitted,

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